

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

BILL LIETZKE,

Plaintiff,

vs.

CITY OF MONTGOMERY, et al.,

Defendants.

Case No. 2:13-cv-00547-LDG-PAL

**REPORT OF FINDINGS AND  
RECOMMENDATION**

(IFP App - Dkt. #1)

Plaintiff Bill Lietzke is proceeding in this action pro se, has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis, and submitted a Complaint on April 1, 2013. This proceeding was referred to this court by Local Rule IB 1-9.

Plaintiff's Application to Proceed in Forma Pauperis is incomplete. He has not fully responded to Question 3. Although he indicates he receives monthly Social Security disability benefits and Supplemental Social Security benefits, he has not stated whether or not he has received income from any of the other listed sources. In addition, even if Plaintiff had filed a completed Application, the Complaint suffers from a number of deficiencies, and for the reasons set forth below, it will be recommended that it be dismissed.

Plaintiff's Complaint attempts to state a claim under 42 U.S.C. § 1983 for various constitutional violations. Plaintiff is a resident of Montgomery County, Alabama. It is unclear who Defendants Reese McKinney and D.T. Marshall are because they are not specifically mentioned in the body of the Complaint and are only named in the case caption. Plaintiff claims that the Defendants violated his rights under the First, Second, Third, Fourth, and Fifth Amendments. Specifically, he claims that on August 2, 1999, Defendants kidnapped him and involuntarily committed him to the Greil Memorial Psychiatric Hospital in Montgomery, Alabama, without probable cause. Subsequently, on August 9,

1 1999, Plaintiff claims Defendants brought him before the Montgomery County Probate Court and  
2 initiated proceedings against him without probable cause. On that same day, Defendants also took him  
3 to Jackson Hospital and then on August 11, 1999, they brought him back to the Psychiatric Hospital.  
4 Plaintiff also alleges that Defendants violated his First, Second, Third, Fourth, and Fifth Amendment  
5 rights on December 19, 2002, when they kidnapped Plaintiff and “dragged” him without probable cause  
6 to the Greil Memorial Psychiatric Hospital. He asserts that on December 23, 2002, Defendants again  
7 brought him before the Montgomery County Probate Court and instituted proceedings against him  
8 without probable cause. The same day, Defendants returned Plaintiff to the Psychiatric Hospital.

9 28 U.S.C. § 1915 provides that a court shall dismiss a complaint by a plaintiff proceeding in  
10 forma pauperis where the complaint is frivolous, malicious, or fails to state a claim upon which relief  
11 can be granted. Plaintiff’s § 1983 claims are time-barred. Although the statute of limitations is usually  
12 a matter to be raised as an affirmative defense, in an action proceeding under § 1983, the court may  
13 consider affirmative defenses that are apparent on the face of the complaint. *See Franklin v. Murphy*,  
14 745 F.2d 1221, 1228-29 (9th Cir. 1984) (dismissal based on a complete defense which appears on the  
15 face of the pleadings is distinguishable from the court’s anticipation of potential defenses).

16 Section 1983 does not provide a specific statute of limitation, but 42 U.S.C. § 1988 provides  
17 that where the federal law does not provide a statute of limitations, state law shall apply. The Supreme  
18 Court has held that in the interest of national uniformity and predictability, all section 1983 claims shall  
19 be treated as tort claims for the recovery of personal injuries. *See Wilson v. Garcia*, 471 U.S. 261  
20 (1985); *Owens v. Okure*, 488 U.S. 235 (1989). In *Owens*, the Supreme Court held that in section 1983  
21 suits, the federal courts shall apply the general or residual statute of limitations for the forum state. 488  
22 U.S. at 249-50. In Nevada, the personal injury statute of limitations is two years. *See N.R.S.*  
23 11.190(4)(e). Here, Plaintiff alleges the government conduct occurred in 1999 and 2002—fourteen and  
24 ten years ago, respectively. Thus, any claim Plaintiff could bring under section 1983 is time-barred.

25 Additionally, even if Plaintiff could state a claim this court lacks personal jurisdiction over  
26 Montgomery County, Alabama and the Alabama defendants the Plaintiff is attempting to sue. Under 28  
27 U.S.C. § 1391(b), a civil action that is not founded solely on diversity of citizenship may be brought  
28 only in: (1) a judicial district where any defendant resides, if all defendants reside in the same state; (2)

a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred; or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought. *Id.* Here, the conduct about which Plaintiff complains occurred in Montgomery, Alabama, where Plaintiff resides. Plaintiff does not allege Defendants live outside Montgomery, Alabama. Therefore, the District of Nevada is not a proper forum for this case.

Finally, this is at least the sixth time Plaintiff has filed this lawsuit in various courts across the country against these same Defendants. *See, e.g., Lietzke v. McKinney*, Case No. 07-cv-383-WKW-TFM (D. Ala. 2007) (case dismissed); *Lietzke v. McKinney*, Case No. RDB-07-1061 (D. Md. 2007) (case transferred for improper venue); *Lietzke v. County of Montgomery*, ST-06-1410 (D. Or. 2006) (case dismissed for lack of personal jurisdiction); *Lietzke v. City of Montgomery*, Case No. HA-06-1804 (D. Or. 2006) (case dismissed with prejudice); *Lietzke v. City of Montgomery*, Case No. MEF-03-584 (M.D. Ala. 2003) (motion to dismiss granted as to all federal claims). Filing multiple complaints in multiple courts against the same defendants for the same alleged conduct is an abusive litigation tactic that wastes the resources of the court and may result in sanctions, or declaring Plaintiff a vexatious litigant.

For all of these reasons,

**IT IS RECOMMENDED** that:

1. Plaintiff's Application to Proceed In Forma Pauperis (Dkt. #1) be DENIED.
2. The Clerk of the Court be directed to FILE Plaintiff's Complaint and that Plaintiff's Complaint be DISMISSED.

Dated this 15th day of July, 2013.

  
 PEGGY A. LEEN  
 UNITED STATES MAGISTRATE JUDGE

**NOTICE**

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being

1 served with these findings and recommendations, any party may file written objections with the court.  
2 Pursuant to Local Rule of Practice (LR) IB 3-2(a), any party wishing to object to the findings and  
3 recommendations of a magistrate judge shall file and serve *specific written objections* together with  
4 points and authorities in support of those objections, within fourteen days of the date of service of the  
5 findings and recommendations. The document should be captioned “Objections to Magistrate Judge’s  
6 Findings and Recommendations.” The parties are advised that failure to file objections within the  
7 specified time may waive the right to appeal the District Court’s Order. *Martinez v. Ylst*, 951 F.2d 1153  
8 (9th Cir. 1991). The points and authorities filed in support of the specific written objections are subject  
9 to the page limitations found in LR 7-4.